

Harrington

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-221875 DATE: June 4, 1986
MATTER OF: Lewis-Shane, CPA

DIGEST:

1. Protest against solicitation requirements, apparent prior to the submission of initial proposals, is untimely when it is not filed until after award has been made.
2. Protest against agency's technical evaluation of proposal is denied where the protester has not shown it to be unreasonable, inconsistent with the stated evaluation criteria, or in violation of procurement statutes and regulations.

Lewis-Shane, CPA protests against the Department of Labor's (DOL) technical evaluation of its proposal, submitted in response to request for proposals (RFP) No. L/A 85-22.

We deny the protest.

Background

The solicitation was for professional accounting, auditing, and associated support services required by the DOL's Office of the Inspector General. Issued as a total small business set-aside, the RFP contemplated the award of a number of 1-year contracts based on a fixed-unit price for numerous labor categories with a specified range of minimum and maximum required hours.

Lewis-Shane protests that its proposal was not reviewed under one of the evaluation factors established in the RFP, and that it automatically received a zero point score in this area. The protester also alleges that the point scores it received in other evaluation categories were unjustifiably low. Further, Lewis-Shane contends that the maximum end of the range for anticipated required hours of performance was unrealistic because the DOL budget precludes this expense.

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The RFP specified that technical proposals would be evaluated in accordance with the following five evaluation factors:

<u>Technical Evaluation Factors</u>	<u>Maximum Points</u>
General Qualifications	25
Client Experience	15
Personnel Qualifications and Experience	25
Project Management	20
Understanding Scope of Work	15

A technical Evaluation Panel Organization reviewed the initial proposals and determined the competitive range by rating the proposals as technically acceptable or unacceptable or, where a proposal might be made acceptable through discussion with the offeror, marginally acceptable pending final evaluation.

Lewis-Shane's proposal was rated marginally acceptable, and discussions were held concerning its specific deficiencies. The negotiation notes from the discussion indicate that the panel had found that Lewis-Shane's initial offer did not provide a sufficient number of work hours, since it did not offer the maximum anticipated requirement under the RFP; that no resumes had been submitted for the senior personnel; and that the proposal did not adequately address the use of microcomputers. During the discussions, the agency advised Lewis-Shane that in order to be technically acceptable, its final proposal would have to provide staff for the maximum anticipated hours of performance required.

Lewis-Shane submitted its best and final offer, which was again reviewed by the evaluation panel. The panel found this offer to be technically unacceptable because it failed to meet the solicitation requirements for three of the major labor categories. Specifically, Lewis-Shane's proposal failed to meet the following maximum performance requirements:

<u>Personnel Category</u>	<u>Hours Proposed</u>	<u>Hours Required</u>
Partner	2,000	2,080
Manager	2,200	6,240
Supervisor	2,000	6,240

Although the protester had submitted an addendum to its initial proposal stating that "should the need to hire subcontractors to complete the proposed requirement become necessary, we will select a qualified subcontractor and obtain prior written approval from the Contracting Officer,"

and proposed to provide an additional 4,160 hours of performance in each of the categories of manager and supervisor, this proposed plan was not acceptable under the RFP. In a list of questions and answers concerning this RFP that had been provided to prospective offerors along with solicitation amendments, DOL had specified that offerors were required to "state the source of all personnel resources . . . [e.g.] subcontractor staff . . ." and that they "must present agreements with providers of all resources so as to legitimize the proposal." Lewis-Shane's general plan to find an acceptable accounting firm to provide the services, "if necessary", did not meet this standard.

The agency report states that because Lewis-Shane's technical proposal was determined on this basis to be non-responsive to the terms of the solicitation, there was no reason for the evaluation panel to check the firm's references in order to complete its evaluation of the second evaluation factor, Client Experience. Lewis-Shane was notified that it had not been selected for award, and was debriefed.

Analysis

Lewis-Shane argues that DOL's estimate of its maximum work-hour requirement was unrealistic, given the agency's budgetary restraints, and that it was unreasonable to require offerors to demonstrate their ability to provide the maximum number of work-hours without guaranteeing this level of use.

To the extent Lewis-Shane's protest is based on the alleged unreasonableness of the requirements established in the RFP, it is untimely. Section 21.2(a)(1) of our Bid Protest Regulations provides that protests based on alleged improprieties that are apparent on the face of a solicitation must be filed prior to the closing date for the receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1985). Since Lewis-Shane did not protest until after awards had been made we will not consider this basis of the protest.

Lewis-Shane argues that it did not deserve a zero point score for the evaluation factor of Client Experience, and that the agency's failure to evaluate this factor was unreasonable. We need not determine whether the agency's decision not to evaluate this factor once it had found the proposal technically unacceptable was improper, however, because we do not believe it was prejudicial to the protester in any case. Even if Lewis-Shane had received the

maximum possible points for this factor, 15, the overall technical score for its best and final offer would still have been lower than every other offeror the agency found technically acceptable. We therefore have no basis to disturb this portion of the evaluation.

Lewis-Shane also protests that its proposal was scored unjustifiably low in the area of Personnel Qualifications and Experience. The agency report indicates that this score reflected the protester's failure to provide resumes, as required, for two proposed Managers and two proposed Supervisors, and its failure to indicate whether the firm had any of the required Senior category personnel in its employment. Finally, the protester's proposal had not provided sufficient hours for the Economic Analysis Specialist to meet the agency's stated requirements.

In considering the arguments concerning the agency's evaluation of the proposal, our standard of review is limited to considering whether the evaluation was legally objectionable in any way. In this regard, we point out that our Office does not independently review proposals to determine which offer is most advantageous to the government. The Jonathan Corp., B-199407.2, Sept. 23, 1982, 82-2 CPD ¶ 260. Rather, our review is limited to examining whether the agency's evaluation was fair, reasonable and consistent with the stated evaluation criteria. We will question a contracting official's determination concerning the technical merit of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Computer Sciences Corp., B-210800, Apr. 17, 1984, 84-1 CPD ¶ 422.

Here, a major weakness in Lewis-Shane's initial proposal, identified during discussions, was the firm's omission of any indication that it could offer the required Senior category personnel. However, in its best and final offer, the protester merely stated that it had "implemented a process to employ another senior accountant . . ." and that it had contacted several recruiting firms for this purpose. It proposed to provide supervisory experience and complete resumes for senior accountants "as soon as a final selection is made."

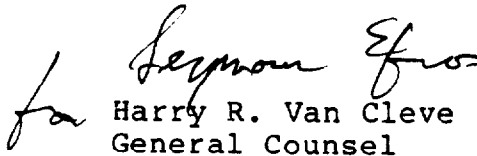
It is apparent that the protester's best and final offer did not provide specific information on all of the personnel required because it did not yet employ some of them. In this circumstance, the agency had nothing to evaluate but the protester's promise that once it had found appropriate personnel, it would provide resumes. The agency therefore contends that the proposal was technically unacceptable on this basis.

Further, although the protester proposed to provide two managers and two supervisors, it did not include resumes for these positions. The agency therefore argues that it was unable to substantiate or evaluate these personnel to determine whether they met the experience requirements for their respective labor categories.

We believe the agency's stated basis for its evaluation of this factor was reasonable because of the lack of key information in the protester's proposal. The protester, on the other hand, has provided no specific reasons why its score was unjustified. Our Office has consistently held that the fact that the protester does not agree with the agency's evaluation of its proposal does not itself render the evaluation unreasonable. See, e.g., Warren Mangement, Inc., B-217257, Apr. 9, 1985, 85-1 CPD ¶ 407.

Lewis-Shane also protests that its costs were competitive and that it should not have received a point score of zero for this factor. However, the fact that Lewis-Shane's price was lower than some other offerors does not, by itself, require that the agency consider the firm for award. The purpose in having price as an evaluation factor in a negotiated procurement is to ensure that the prices proposed by qualified offerors who submit acceptable proposals will be taken into account rather than making award to higher-priced offerors on the basis of technical superiority alone. That purpose does not extend to considering the offered prices of firms whose proposals are technically unacceptable. See ALM, Inc. et al., B-217284.2, Apr. 16, 1985, 85-1 CPD ¶ 433.

We conclude that DOL's evaluation of the protester's proposal was reasonable in regard to each of the arguments raised. Accordingly, the protest is denied.


Harry R. Van Cleve
General Counsel